

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

NPR INVESTMENTS, LLC,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

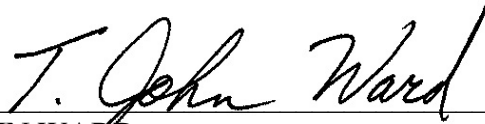
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CIVIL ACTION NO. 5:05-CV-219

ORDER

Before the court is Plaintiff's Motion for Summary Judgment. (Dkt. No. 15). The Motion is DENIED. In the Motion, Plaintiff argues that the first deficiency notice sent by the IRS on March 25, 2005, was a valid FPAA, therefore, the August 15, 2005 FPAA was invalid. This argument is unavailing. The court is not persuaded that as a matter of law the March 25, 2005 deficiency notice qualified as a FPAA. Further, assuming *arguendo* that the March 25, 2005 deficiency notice did in fact qualify as a FPAA, there is an genuine issue of material fact as to whether the August 15, 2005 FPAA was allowable because of a misrepresentation of material fact made by the plaintiff. If so, the August 15, 2005 FPAA would be valid. Therefore, Summary Judgment in favor of the plaintiff is inappropriate.

SIGNED this 4th day of June, 2009.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE